

II. Rejections under 35 U.S.C. § 103(a)

A. *de la Mettrie '295 and Research Disclosure*

The Examiner rejects claims 1-6 and 8-65 under § 103(a) as being unpatentable over *de la Mettrie et al.* (U.S. Patent No. 5,989,295) ("*de la Mettrie '295*") in view of *Research Disclosure*, December 1999, pp. 1552-1554 (XP-000934522 ("*Research Disclosure*"). Office Action, page 2. Applicants respectfully disagree for at least one of the following reasons.

First, the Examiner has failed to point to any evidence of suggestion or motivation to modify the composition of *de la Mettrie '295* by incorporating in it the acrylates/Methacrylates/Beheneth-25 Methacrylate Copolymer ("Aculyn 28") as disclosed in the *Research Disclosure*. *de la Mettrie '295* discloses "oxidation dye compositions (after mixing with the oxidizing agent)," "comprising at least one oxidation dye precursor and optionally one or more couplers and at least one anionic amphiphilic polymer," "which do not run and thus remain better localized at the point of application, and which also make it possible to obtain more chromatic (more luminous) and more intense shades." Col. 1, lines 7-9 and 58-64. Therefore, there is no need or desirability to add an additional thickener, let alone the specific at least one additional anionic associative polymer as cited in, for example, Claim 1 of the present invention. "[T]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." M.P.E.P. § 2143.01 (emphasis in original and emphasis supplied).

The Examiner alleges that the modification of the composition of *de la Mettrie* '295 by incorporating in it Aculyn 28 as disclosed in the *Research Disclosure* would have been obvious because (1) *de la Mettrie* '295 "teaches and suggests a number of anionic associative polymers having a mixture of monomers that can be used in the composition" (citing col. 4, lines 25-65) and (2) the *Research Disclosure* "clearly suggests the use of [Aculyn 28] in cosmetic formulation to offer thickening, stabilizing and the suspension of ingredients in the composition" (citing page 1, 5<sup>th</sup> paragraph). Office Action, pages 3 and 4. However, Applicants respectfully submit that *de la Mettrie* '295 in column 4, lines 25-65 discloses specific examples of the at least one anionic amphiphilic polymer, which is already taught as an ingredient of the composition ("The anionic amphiphilic polymers which may be used in the contest of the present invention may more particularly denote polymers formed from a mixture of monomers comprising . . ."). Therefore, *de la Mettrie* '295 does not teach or suggest to add an additional anionic associative polymer "to offer thickening, stabilizing and the suspension of ingredients in the composition," especially given the fact that its composition is described as already stable, does not run and thus remains better localized at the point of application.

Finally, the Examiner has failed to point to any evidence of a reasonable expectation of success to modify the composition of *de la Mettrie* '295 by incorporating in it Aculyn 28 as disclosed in the *Research Disclosure* to arrive at the presently claimed invention. As discussed above, *de la Mettrie* '295 discloses "oxidation dye compositions (after mixing with the oxidizing agent)." Col. 1, lines 58-61; see also col. 2, lines 19-20. The *Research Disclosure* merely discloses that

Aculyn 28 "can be used as a thickener in hair dyes . . . other [h]air care products . . . as well as skin care products." Page 1, 5<sup>th</sup> paragraph. The specific examples disclosed in the *Research Disclosure* are the combinations of Aculyn 28 with magnesium aluminum silicate or with a quasi cationic polymer. Pages 2 and 3. Neither *de la Mettrie* '295 nor the *Research Disclosure*, alone or in combination, teaches or suggests a reasonable expectation of success of combining Aculyn 28 with the oxidative dye composition of *de la Mettrie* '295, let alone the at least one additional anionic associative polymer and the at least one oxidizing agent as recited in, for example, Claim 1 of the present invention.

Instead, it is well known by one of ordinary skill in the art that oxidative dye compositions are highly unpredictable. For example, Cohen et al. (U.S. Patent No. 5,393,305) ("Cohen"), which was brought to the Examiner's attention with a submission of an Information Disclosure Statement and PTO 1449 form on March 16, 2001, and was considered by the Examiner on January 17, 2002, emphasizes the unpredictability associated with oxidative hair dye compositions. Specifically, Cohen teaches that oxidative dye compositions involve a delicate balance designed to satisfy several conditions, including, for example, stability, rheological properties, rapid diffusion, and comparable viscosities. Col. 1, lines 17-60. Therefore, adding Aculyn 28 into the oxidative dye composition of *de la Mettrie* '295 as proposed by the Examiner might destroy the already-existing-stability of the composition without establishing a new stable composition.

Accordingly, Applicants respectfully request this rejection be withdrawn.

**B. de la Mettrie '295, Research Disclosure, and de la Mettrie '195**

The Examiner also rejects Claim 7 under § 103(a) as being unpatentable over *de la Mettrie '295* in view of the *Research Disclosure*, and further in view of *Hutchins et al.* (U.S. Patent No. 5,830,447) ("*Hutchins*"). Office Action, page 5. Specifically, the Examiner admits that *de la Mettrie '295* and the *Research Disclosure* "fail to teach compositions comprising [the] anionic associative polymer, which is crosslinked with at least one allyl ether chosen from allyl ethers of sucrose and allyl ether[s] pentaerythritol" as cited in Claim 7 of the present invention. *Id.* To remedy this deficiency, the Examiner relies on *Hutchins* for its teaching of "copolymers of C10-C30 alkyl acrylates with one or more [monomers] of acrylic acid, methacrylic acid or one of their short chain (i.e. [C<sub>1-4</sub>] alcohol) ester[s], wherein the crosslinking agent is an allyl ether of sucrose or pentaerythritol." *Id.* Applicants respectfully traverse this rejection for at least the following reason.

As discussed above, neither *de la Mettrie '295* nor the *Research Disclosure*, alone or in combination, provides evidence of suggestion or motivation and evidence of a reasonable expectation of success to incorporate Aculyn 28 as disclosed in the *Research Disclosure* into the composition of *de la Mettrie '295*. *Hutchins* does not remedy these deficiencies. Therefore, as the Examiner has failed to establish a *prima facie* case of obviousness, Applicants respectfully request this rejection be withdrawn.

**III. Conclusion**

In view of the foregoing remarks, Applicants respectfully request reconsideration and reexamination of this application, and the timely allowance of the rejected claims.

If the Examiner believes a telephone conference would be useful in resolving any outstanding issues, he is urged to call the undersigned Applicant's representative at (202) 408-4218.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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